
By: **Chairman, Judiciary Committee (By Request - Departmental - State Police)**

Introduced and read first time: February 4, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - State Fire Marshal - Search Warrants**

3 FOR the purpose of authorizing the State Fire Marshal or certain employees of the
4 Office of the State Fire Marshal to receive and execute certain search warrants;
5 authorizing the State Fire Marshal or certain employees of the Office of the
6 State Fire Marshal to search certain places or persons and seize certain
7 property; authorizing the court to issue certain search warrants to the State
8 Fire Marshal or certain employees of the Office of the State Fire Marshal; and
9 generally relating to the authority of the State Fire Marshal and certain
10 employees of the Office of the State Fire Marshal and search warrants.

11 BY repealing and reenacting, with amendments,
12 Article - Criminal Procedure
13 Section 1-203
14 Annotated Code of Maryland
15 (2001 Volume and 2003 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Criminal Procedure**

19 1-203.

20 (a) (1) A circuit court judge or District Court judge may issue forthwith a
21 search warrant whenever it is made to appear to the judge, by application as
22 described in paragraph (2) of this subsection, that there is probable cause to believe
23 that:

24 (i) a misdemeanor or felony is being committed by a person or in a
25 building, apartment, premises, place, or thing within the territorial jurisdiction of the
26 judge; or

1 (ii) property subject to seizure under the criminal laws of the State
2 is on the person or in or on the building, apartment, premises, place, or thing.

3 (2) An application for a search warrant shall be:

4 (i) in writing;

5 (ii) signed and sworn to by the applicant; and

6 (iii) accompanied by an affidavit that:

7 1. sets forth the basis for probable cause as described in
8 paragraph (1) of this subsection; and

9 2. contains facts within the personal knowledge of the affiant
10 that there is probable cause.

11 (3) The search warrant shall:

12 (i) be directed to a duly constituted police officer, THE STATE FIRE
13 MARSHAL, OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT OF THE
14 OFFICE OF THE STATE FIRE MARSHAL and authorize the police officer, THE STATE
15 FIRE MARSHAL, OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT OF
16 THE OFFICE OF THE STATE FIRE MARSHAL to search the suspected person, building,
17 apartment, premises, place, or thing and to seize any property found subject to
18 seizure under the criminal laws of the State; and

19 (ii) name or describe, with reasonable particularity:

20 1. the person, building, apartment, premises, place, or thing
21 to be searched;

22 2. the grounds for the search; and

23 3. the name of the applicant on whose application the search
24 warrant was issued.

25 (4) (i) The search and seizure under the authority of a search warrant
26 shall be made within 15 calendar days after the day that the search warrant is issued.

27 (ii) After the expiration of the 15-day period, the search warrant is
28 void.

29 (b) (1) A circuit court judge or District Court judge shall cause property
30 taken under a search warrant to be restored to the person from whom it was taken if,
31 at any time, on application to the judge, it appears that:

32 (i) the property taken is not the same as that described in the
33 search warrant;

1 (ii) there is no probable cause for believing the existence of the
2 grounds on which the search warrant was issued; or

3 (iii) the property was taken under a search warrant issued more
4 than 15 calendar days before the seizure.

5 (2) The judge may receive an oral motion made in open court at any time
6 making application for the return of seized property if the application for return is
7 based on any ground described in paragraph (1) of this subsection.

8 (3) If the judge grants the oral motion described in paragraph (2) of this
9 subsection, the order of the court shall be in writing and a copy of the order shall be
10 sent to the State's Attorney.

11 (4) Court costs may not be assessed against the person from whom the
12 property was taken if:

13 (i) the judge denies the oral motion and requires the person from
14 whom the property was taken to proceed for return of the seized property by petition
15 and an order to show cause to the police authority seizing the property; and

16 (ii) it is later ordered that the property be restored to the person
17 from whom it was taken.

18 (5) If the judge finds that the property taken is the same as that
19 described in the search warrant and that there is probable cause for believing the
20 existence of the grounds on which the search warrant was issued, the judge shall
21 order the property to be retained in the custody of the police authority seizing it or to
22 be otherwise disposed of according to law.

23 (c) (1) This subsection does not apply to contraband or other property
24 prohibited by law from being recoverable.

25 (2) Property seized under a search warrant issued under subsection (a)
26 of this section may be returned to the person to whom the property belongs without
27 the necessity of that person bringing an action for replevin or any other proceeding
28 against the unit with custody of the property if:

29 (i) the criminal case in which the property was seized is disposed of
30 because of a nolle prosequi, dismissal, or acquittal;

31 (ii) the State does not appeal the criminal case in which the
32 property was seized; or

33 (iii) the time for appeal has expired.

34 (d) (1) A circuit court judge or District Court judge shall cause property
35 rightfully taken under a search warrant to be restored to the person from whom it
36 was taken if, at any time, on application to the judge, the judge finds that the

1 property is being wrongfully withheld after there is no further need for retention of
2 the property.

3 (2) The judge may receive an oral motion made in open court at any time
4 making application for the return of seized property if the application for return is
5 based on the ground that the property, although rightfully taken under a search
6 warrant, is being wrongfully withheld after there is no further need for retention of
7 the property.

8 (3) If the judge grants the oral motion described in paragraph (2) of this
9 subsection, the order of the court shall be in writing and a copy of the order shall be
10 sent to the State's Attorney.

11 (4) Court costs may not be assessed against the person from whom the
12 property was taken if:

13 (i) the judge denies the oral motion and requires the person from
14 whom the property was taken to proceed for return of the seized property by petition
15 and an order to show cause to the police authority wrongfully withholding the
16 property; and

17 (ii) it is later ordered that the property be restored to the person
18 from whom it was taken.

19 (e) (1) This subsection applies to criminal investigations conducted by a law
20 enforcement unit, grand jury, or State's Attorney under Article 10, § 39A of the Code
21 into alleged criminal activities in violation of:

22 (i) §§ 5-601 through 5-609, §§ 5-612 through 5-614, § 5-617, §
23 5-619, or § 5-628 of the Criminal Law Article, relating to controlled dangerous
24 substances;

25 (ii) § 2-201 or § 2-204 of the Criminal Law Article, relating to
26 murder; or

27 (iii) § 11-207 or § 11-208 of the Criminal Law Article, relating to
28 pornography.

29 (2) Notwithstanding any provision of the Maryland Rules, a circuit court
30 judge or District Court judge, on a finding of good cause, may order that an affidavit
31 presented in support of a search and seizure warrant be sealed for a period not
32 exceeding 30 days.

33 (3) A finding of good cause required by paragraph (2) of this subsection is
34 established by evidence that:

35 (i) the criminal investigation to which the affidavit is related is of
36 a continuing nature and likely to yield further information that could be of use in
37 prosecuting alleged criminal activities; and

- 1 (ii) the failure to maintain the confidentiality of the investigation
2 would:
- 3 1. jeopardize the use of information already obtained in the
4 investigation;
- 5 2. impair the continuation of the investigation; or
6 3. jeopardize the safety of a source of information.
- 7 (4) After the order sealing the affidavit expires, the affidavit shall be:
- 8 (i) unsealed; and
9 (ii) delivered within 15 days:
- 10 1. to the person from whom the property was taken; or
11 2. if that person is not on the premises at the time of delivery,
12 to the person apparently in charge of the premises from which the property was
13 taken.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
15 effect October 1, 2004.